

FILED & ENTERED

AUG 03 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
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ORDER NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

JOSEPH ELLISON,

Debtor.

Case No. 2:14-bk-24463 RK

Chapter 7

Adv. No. 2:15-ap-01001 RK

**JPMORGAN CHASE BANK, N.A. and
J.P. MORGAN SECURITIES, LLC,**

Plaintiffs,

vs.

JOSEPH ELLISON,

Defendant.

ORDER ON PLAINTIFFS JPMORGAN
CHASE, N.A. and J.P. MORGAN
SECURITIES, LLC'S MOTION FOR
SUMMARY JUDGMENT, DENYING
SUMMARY JUDGMENT, GRANTING
RELIEF IN PART BY TREATING
CERTAIN FACTS AS ESTABLISHED
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 56(g) AND
VACATING HEARING

Hearing

Date: August 4, 2015

Time: 3:00 p.m.

Place: Courtroom 1675
255 East Temple Street
Los Angeles, CA 90012

Pending before the court is Plaintiffs J.P. Morgan Chase, N.A. and J.P. Morgan Securities, LLC ("Plaintiffs") Motion for Summary Judgment Pursuant to F.R.B.P. 7056 ("Motion"). ECF 11. The Motion seeks summary judgment as to Plaintiffs' two causes of action under 11 U.S.C. § 727(a)(2)(A) and (B).

1 Having considered the papers in support and in opposition of the Motion, for the
2 reasons stated herein, the court determines that oral argument on the Motion is
3 unnecessary, dispenses with oral argument, takes the Motion under submission, vacates
4 the hearing on the Motion on August 4, 2015 at 3:00 p.m., denies the Motion as to the
5 request for summary judgment, but grants relief in part by treating certain facts as
6 established in this adversary proceeding as not genuinely in dispute pursuant to Federal
7 Rule of Civil Procedure 56(g).

8 The court will exercise its discretion pursuant to Federal Rule of Civil Procedure
9 56(g), made applicable here by Federal Rule of Bankruptcy Procedure 7056, and will
10 treat as established Plaintiffs' Statement of Uncontroverted Facts 1-12, 14-24, 30, 31, 33,
11 34, 36, 37, 38, 40, 41, 42 and 43 because those facts are admitted by Defendant and
12 thus not genuinely in dispute pursuant to Federal Rule of Civil Procedure 56(g).

13 The court will also exercise its discretion pursuant to Federal Rule of Civil
14 Procedure 56(g) and will treat Facts 25, 27, 28, 29, 32 and 39 as established as not
15 genuinely in dispute in this adversary proceeding because the movements of money
16 between bank accounts which are not disputed by Defendant as having occurred do
17 constitute transfers within the meaning of the Bankruptcy Code, 11 U.S.C. § 101(54), as
18 held by applicable Ninth Circuit precedent. *In re Bernard*, 96 F.3d 1279, 1281-1283 (9th
19 Cir. 1996) (bank deposits and withdrawals satisfy the broad definition of "transfer" in the
20 Bankruptcy Code, 11 U.S.C. § 101(54) ("transfer" means every mode, direct or indirect,
21 absolute or conditional, voluntary or involuntary, of disposing of or parting with property or
22 with an interest in property, including retention of title as a security interest and
23 foreclosure of the debtor's equity of redemption"), *citing inter alia*, S. Rep. No. 989.
24 95th Cong., 2d Sess 27 (1978), reprinted in 1978 U.S. Code Cong. & Adm. News. 5787,
25 5813 ("A deposit in a bank account or similar account is a transfer." (emphasis omitted)).
26 This ruling leaves asserted "Uncontroverted" Facts 13, 26 and 35 as still "controverted"
27 and disputed to be resolved at trial.

1 The court will thus deny summary judgment as to both causes of action because
2 the court determines that there are still genuine issues of material fact for trial as to
3 whether Defendant intended to hinder, delay, or defraud a creditor with the various
4 transfers at issue in this case as asserted in Facts 13, 26 and 35, which determination
5 precludes the granting of summary judgment pursuant to Federal Rule of Civil Procedure
6 56(a) and Federal Rule of Bankruptcy Procedure 7056.

7 For the reasons stated above, IT IS HEREBY ORDERED as follows:

- 8 1. Facts 1-12, 14-25, 27-34 and 36-43 of Plaintiffs' Statement of Uncontroverted
9 Facts are hereby treated as established because such facts are not genuinely in
10 dispute in this adversary proceeding pursuant to Federal Rule of Civil Procedure
11 56(g) and Federal Rule of Bankruptcy Procedure 7056.
- 12 2. The Motion is hereby denied as to Plaintiffs' request for entry of summary
13 judgment.
- 14 3. The hearing on the Motion scheduled for August 4, 2015 at 3:00 p.m. is vacated
15 and taken off calendar. No appearances are required on the Motion on August 4,
16 2015.

17 IT IS SO ORDERED.

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23 Date: August 3, 2015



Robert Kwan
United States Bankruptcy Judge